INDEX

CITATIONS

Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1943

NOS. 410 AND 414

LOUIS H. EGAN, PETITIONER

v.

UNITED STATES OF AMERICA

UNION ELECTRIC COMPANY OF MISSOURI,
A CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT[1]

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (R. 1231–1258) is reported at 137 F. (2d) 369.

[1] Although two separate petitions for certiorari were filed, they arise out of a single trial and are based on a single record. The most important issue raised in both petitions is the same. For this reason, we submit one brief in response to both petitions.

JURISDICTION

The judgment of the circuit court of appeals in each case (R. 1259–1260) was entered August 9, 1943, and petitions for rehearing were denied September 9, 1943 (R. 1278, 1295). The petition of Louis H. Egan for a writ of certiorari was filed October 5, 1943. The petition of the Union Electric Company of Missouri was filed October 8, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, made applicable by Section 25 of the Public Utility Holding Company Act of 1935 (15 U. S. C. 79y). See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

STATUTE INVOLVED

Section 12 (h) of the Public Utility Holding Company Act of August 26, 1935, c. 687, 49 Stat. 803, 824–825, 15 U. S. C. 79*l* (h), provides:

> It shall be unlawful for any registered holding company, or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly—
>
> (1) to make any contribution whatsoever in connection with the candidacy, nomination, election or appointment of any person for or to any office or position in the Government of the United States, a State, or any political subdivision of a State, or any

agency, authority, or instrumentality of any one or more of the foregoing; or

(2) to make any contribution to or in support of any political party or any committee or agency thereof.

The term "contribution" as used in this subsection includes any gift, subscription, loan, advance, or deposit of money or anything of value, and includes any contract, agreement, or promise, whether or not legally enforceable, to make a contribution.

QUESTIONS PRESENTED

1. Whether Section 12 (h) of the Public Utility Holding Company Act of 1935 is constitutional.

2. Whether petitioner Union Electric Company of Missouri is liable for the acts of its officers in making political contributions in violation of 12 (h).

3. Whether there was sufficient evidence to support petitioner Egan's conviction for conspiracy.

4. Whether the trial court committed reversible error in charging the jury that contributions made to office holders were in violation of Section 12 (h) if the jury should find that such contributions were made in contemplation of their candidacies.

STATEMENT

Union Electric Company of Missouri and Louis H. Egan, its former president, were indicted in eight counts in the District Court of the United States for the Eastern District of Missouri.

Count 1 charged a continuing conspiracy from February 25, 1937, to the return date of the indictment, among the corporation, Egan, Boehm and Laun (two officers who were not indicted), and other persons unknown to the grand jury to violate Section 12 (h) of the Public Utility Holding Company Act of 1935 by raising a secret cash fund and making political contributions therefrom (R. 16–23). Counts 2 to 8 charged separate substantive violations of section 12 (h), effected by the use of the mails or the instrumentalities of interstate commerce (R. 23–31). Demurrers to the indictment, in which petitioners challenged the constitutionality of Section 12 (h) were overruled (R. 32–33, 200–204). Egan was found guilty on the first count and Union Electric on all counts (R. 53, 1198–1199). Motions for a new trial and in arrest of judgment were denied (R. 54–56, 1200–1219). Egan was sentenced to a term of two years and to pay a fine of $10,000, and Union Electric was sentenced to pay a fine of $10,000 on each count (R. 56–58, 1220). On appeal the convictions were unanimously affirmed (R. 1260).

Union Electric is both an operating electric utility company and a holding company with subsidiaries in Missouri, Illinois, and Iowa (R. 220–224, 240–242; 686–687). It is itself a subsidiary of the North American Company, which during the entire period covered by the indictment owned, directly or indirectly, all of its com-

mon stock and possessed not less than 89.13% of the voting power (R. 251). On February 25, 1937, North American registered with the Securities and Exchange Commission pursuant to Section 5 of the Act (R. 211–212, 213–215), thus becoming a "registered holding company" as defined by Section 2 (a) (12) and subjecting itself and all its subsidiaries to Section 12 (h). Union Electric itself registered as a holding company on August 30, 1939 (R. 220). During the major part of the period covered by the indictment, until May 18, 1939, Egan was president of the company and chairman of the board of directors, Boehm was executive vice-president and member of the board of directors, and Laun was vice-president in charge of real estate and taxes (R. 215–216, 513–515, 1083).

The general program of political activity, of which the specific charges set forth in the indictment were a part, commenced in about the year 1931 under the immediate direction of Boehm, the executive vice president (R. 842). Boehm testified that Union's participation in political affairs was suggested as early as 1926 and was subsequently encouraged by officers of the parent North American, who wished to develop a political atmosphere favorable to the utility interests (R. 841–843, 857–858). The program was financed largely by a secret cash "slush fund" which was concealed on the books of the corpora-

tion (R. 309, 312, 369, 380, 448, 512, 719–720). The fund was created and concealed: (a) by kick-backs from various attorneys—Fowler, Hamilton, Alschuler, and McMillan—who returned in cash all or part of their annual retainers (R. 310–311, 315–317, 351, 648; 352–354, 364, 370–372, 648–649, 854–855); (b) by cash rebates from a contracting firm which supplied petitioner with insulators and poles (R. 260–264, 267–269, 272–276, 304, 309, 844); (c) by the return in cash of a $6,000 fee paid for an insurance survey and by the receipt in cash of insurance credits to which the Company was entitled by reason of favorable risk experience credit, long-term and fleet contracts (R. 400–403, 405–407, 413–417, 423–424, 445, 448–449); and (d) by cash returns from officers and employees who submitted inflated expense accounts (R. 459, 462, 467, 469–471, 480–481, 489–492, 495–496, 505, 620, 623–624, 646–647, 857). Boehm, executive vice president and director (R. 841, 857), Laun, vice president (R. 646–647), Spoehrer, secretary and director (R. 423, 480), Irish, research engineer and after 1938 controller (R. 495, 505), Miltenberger, vice president in charge of operations (R. 462–463), Kropp, assistant secretary (R. 444, 467), Welsh, vice president of a subsidiary (R. 619–620), May, vice president of a subsidiary (R. 623–624), Emberson, operating auditor (R. 468–469), and Avery, general auditor (R. 459),

all admitted their participation in the practice of "padding" their expense accounts. In the period from 1930 to 1939, the cash received from all these sources amounted to more than $591,000 (R. 511). All these funds, with minor exceptions, were turned over to Boehm, and disbursements therefrom were made for the most part by Boehm or by Laun at Boehm's direction (R. 264, 304, 316, 352–353, 648, 650, 859, 895).[2]

In the period from 1932 to 1939, contributions varying in amount from $25 to $4,000 were made to candidates for virtually every type of elective office, state or local, in the State of Missouri, in all elections, primary, general, or special, in all parts of the State (e. g., R. 650–654, 661–668).[3] The contributions were made to Republicans, Democrats, and nonpartisans (e. g., R. 528, 543–544, 561, 563–564, 572–573, 575, 581–582, 627–628, 632–634, 643), sometimes to opposing candidates for the same office (R. 570, 572, 622–623, 651, 662, 665–666). A number of the contributions were made to candidates for local offices who would be

[2] A few contributions from the fund were made by officials other than Boehm or Laun (R. 441, 625–628, 631–632, 619–621). In addition, Union's insurance brokers were directed to send to public officeholders who held insurance brokerage licenses "brokerage fees" for which no insurance services were rendered in return (R. 406–408, 410–411, 449–450, 563, 575–576, 582–584, 587–606).

[3] The evidence also shows contributions to candidates for offices in Iowa and Illinois (R. 548–549, 560–561, 620–623, 661–662).

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in a position to pass on the valuation of Union's property for tax purposes (e. g., R. 551, 607–609, 635–636, 643–644, 651, 659–660, 662–663). The money was frequently delivered by Laun or Boehm personally (R. 551–566, 665–666), but a number of contributions were made by registered mail (R. 530–531, 543, 554, 607–616, 658, 667, 833–840). The specific contributions set forth in counts two to eight of the indictment were proved to have been made by mail or through interstate instrumentalities (R. 607–617, 667, 670, 833–835).

In addition to these extensive contributions to candidates, petitioner's officers engaged in open and secret lobbying activities (R. 649–650, 660, 665, 668, 764–765, 844, 846, 853, 1125). Bills which were considered detrimental to the company's interests were defeated (R. 645, 655, 764–765, 845–846, 896–897). Measures which the company favored, including a bill drawn by Sullivan and Cromwell, North American's New York attorneys, were introduced and passed (R. 679–680, 842, 845, 879, 897–898). Strenuous efforts were made to defeat any proposal which would permit or encourage municipal ownership (R. 625–628, 631–632, 635–639, 655, 674, 845–846, 896–897). Laun and Boehm both testified that no bill considered detrimental to the company's interest passed the Missouri legislature (R. 645, 846).

In 1938 Funk, a former controller who had been discharged (R. 901, 1142), gave a statement to

the Securities and Exchange Commission (R. 879) which resulted in the Commission's orders for an investigation (R. 1144–1151). Numerous officers and employees of petitioner testified falsely under oath before the Commission over a period of more than a year.[4] (R. 471–472, 491, 505, 629, 685, 697–698, 902–903.) At the suggestion of Sullivan and Cromwell, two New York attorneys, Lincoln and Lundgren, were retained to defend the company during the course of the investigation (R. 348–349, 882–883, 984, 1069, 1120). They examined persons who had been called or probably would be called to testify before the Securities and Exchange Commission and discussed their testimony with some of them (R. 317–318, 322–323, 334–336, 354, 503, 630, 640, 681, 684–685). In the course of the investigation, Lincoln and Lundgren were informed of the nature of the political contributions and the source of funds (R. 322–323, 328, 354, 630, 681, 682, 883) and reported to officers of North American that the situation was serious (R. 984, 1052, 1062, 1080, 1152–1153). By May 1939 the officers of North American deemed it advisable

[4] Laun, Boehm, and an employee named Martin were all indicted for perjury as a result of their testimony before the Commission (R. 629, 685, 890). Martin and Laun pleaded guilty and *nolo contendere*, respectively (R. 629, 685). Boehm was convicted after trial and his conviction was affirmed on appeal (see *Boehm* v. *United States*, 123 F. (2d) 791 (C. C. A. 8), certiorari denied, 315 U. S. 800.

to remove Egan, Boehm, and Laun from office and succeeded in obtaining their resignations on May 16 (R. 452–453, 714–718, 969–971). These former officers were continued at their former salaries until the end of 1939 and were provided with offices to carry on Union's defense against the Securities and Exchange Commission investigation (R. 453–455, 524, 647, 683, 829–831, 888). In January 1940, Spoehrer made a full disclosure to the Securities and Exchange Commission of the expense account padding and insurance rebates (R. 821–827). Egan and Boehm, who were implicated in the affidavit, were then dropped from the pay roll (R. 455–456, 990–992, 1081–1082).

The evidence tending to prove Egan's participation in the conspiracy may be summarized as follows:

From 1926 to April 1938 Egan, with the approval of the officers of North American, received a salary of $1,500 per year as president of the Union Colliery Company, a subsidiary of Union Electric, for the express purpose of enabling him to make political contributions to national political committees as president of the Company (R. 522, 723, 727, 740, 799, 843, 848–853, 1001, 1116, 1134–1141). He did make such contributions in 1936 and in March 1938 (R. 727, 852, 1143). Boehm kept him generally informed of his activities with respect to political contribu-

tions (R. 843, 853, 878–879, 892–893) and discussed a few specific contributions with him (R. 843, 878–879). In fact, after Egan had expressed disapproval of the amount sought by one candidate, Boehm contributed a lesser amount (R. 878–879). On two occasions, in 1936 and 1938, Boehm's secretary delivered to Egan a total of $4,500 from the slush fund kept by Boehm in his safe (R. 805, 1161). Egan was generally informed of the means by which the slush fund was created (R. 843, 853, 855–856). He knew of the ten percent rebate on insulator purchases (R. 262, 844, 1123–1124). He and Boehm were largely responsible for the compensation of the attorneys, and he was informed of the "kick-back" arrangements with at least some of the attorneys (R. 854–855). In 1937, Egan participated in a conference with Boehm and Fogarty of the North American Company at which Boehm presented a summary of Union's expense accounts and a statement showing the benefit to the Company from the defeat of inimical bills. Boehm testified that at this conference Fogarty expressed his approval of the practice of creating a fund by padding expense accounts. (R. 866.)

During the course of the Securities and Exchange Commission's investigation, officers of the Company spoke to Egan and were told by him to "sit tight"; that the Company "would stand" back of them (R. 428, 442–443, 447, 464, 680).

Egan was present at some of the conferences during which Boehm disclosed his activities to Lincoln and Lundgren (R. 883–884), and he was present when Hamilton and Alschuler discussed means by which they could account to the Commission for the large cash withdrawals resulting from the "kickback" arrangement (R. 317, 323, 353–354). When Emberson, an employee who had been called to testify before the Securities and Exchange Commission, stated at a conference which Egan attended that he was afraid he could not account for the padding of his expense accounts, Egan suggested that his expenditures could be accounted for as the expense of luncheon conferences with his subordinates (R. 471, 479-480). On January 7, 1940, Spoehrer's affidavit implicating Egan was read to Egan, Boehm, Lincoln, and Lundgren, and Egan did not challenge or deny the charge (R. 441–443, 826).

Egan took an active interest in the fate of proposals for municipal ownership of power plants (R. 628–629, 1103) and legislation which affected the Company's interests (R. 764–767. 844–845, 897–898). He attended at least one session of the Missouri legislature in 1933 (R. 567, 1125). When Boehm found North American officials unwilling to expend $300,000 for the passage in 1933 of the Indeterminate Permit Bill which the Company favored, Egan himself spoke to an officer of the North American Company

about the matter (R. 845, 1031). Egan asked Laun to effect the passage of a bill controlling the use of motor boats on Union's Lake of the Ozarks (R. 676–677). He admitted maintaining "friendly contacts" with public officials and taking part in the Company's picnics and other affairs at which public officers were entertained (R. 760–764, 1127–1128).

In 1934 Boehm asked Laun to make a study of the election results in each county in Missouri over a ten- or fifteen-year period, to be used as a basis of a program of political expenditures distributed *pro rata* among the utility companies operating in Missouri (R. 673, 858). In May 1934 Egan presided at a meeting of utility executives at Union's Administration Lodge at Bagnell Dam (R. 675, 769–773, 780, 858, 1112, 1124–1125). The difficulties of the utilities in the previous session of the Legislature were discussed and Boehm presented his plan for systematic financial aid to candidates throughout the state (R. 769–773, 779–781, 858).

ARGUMENT

We respectfully submit that the only question of substance raised by the petitions is that of the constitutionality of Section 12 (h). No other question raised by the petitions warrants consideration by this Court.

1. To assist the Court in determining whether certiorari should be granted on the constitutional question, we point out the grounds for concluding that, although the issue raised is important, Section 12 (h) is clearly constitutional under the decisions of this Court. Moreover, the constitutionality of Section 12 (h) does not turn on the involved questions argued in the petitions.

In *Electric Band and Share Co.* v. *Securities and Exchange Commission,* 303 U. S. 419, this Court upheld the constitutionality of Sections 4 and 5 of the Act, which require that holding companies must register if they use the mails or channels of interstate commerce, or if they own securities of subsidiary companies which use the mails or such channels. The activities of The North American Company, Union Electric and the subsidiaries of Union Electric in interstate commerce and through the mails make it clear that they are as fully subject to federal control as was Electric Bond and Share. Union Electric and its subsidiaries transmit electricity across state lines (GX 7–9, R. 223–224, 951); a subsidiary ships coal across state lines (R. 951); Union Electric serves industries in its three-state area which are of nation-wide importance. North American and Union Electric use the facilities of interstate commerce for communication and other-

wise in order that the former may exert its control over the latter (R. 807, 842, 853, 993, 1007, 1111), and both companies have sold large security issues in interstate commerce. *Union Electric Company of Missouri,* 4 S. E. C. 65; *The North American Company,* 4 S. E. C. 434; *The North American Company,* Holding Company Act Release No. 4565 (Sept. 17, 1943). Therefore it avails petitioner nothing to argue the possible application of the Act to registered holding companies or their subsidiaries not actually engaged in interstate commerce, if there are any such. It will be time enough to decide the constitutionality of such regulation when, if ever, it arises.

The prohibition of political contributions may be viewed as an incident of the comprehensive statutory regulation of interstate utility holding-company enterprises, to the end that their integrity shall be maintained. But it is unnecessary to consider the validity of the statutory plan as a whole, for Section 12 (h) may be sustained on narrower grounds.

a. The pattern of the regulation constitutes a Congressional finding that political contributions directly affect interstate commerce, even though, as the petitioners state, there is no express finding by Congress in that regard. This is made plain by the declaration in Sec. 1 (c) that "it is hereby declared to be the policy of

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this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce."[5] After this declaration Congress included in the Act the prohibition of political contributions contained in Sec. 12 (h). In the light of Sec. 1 (c) it is clear that Congress found that political contributions by registered holding companies and their subsidiaries directly affect interstate commerce and involve the evils enumerated in Sec. 1 and are, therefore, within the federal power. Among these evils are those recited in Sec. 1 (b) (5): lack of economy and lack of effective public regulation. It needs no argument to show that both of these evils may flow from a course of political activity.

These Congressional findings will not be overturned, of course, unless they are clearly unreasonable. It certainly is not unreasonable to expect that political contributions by companies as

[5] The findings supporting this declaration of purpose appear in Sec. 1 (a) and (b). Sec. 1 (b) declares that the national public interest is affected by certain evils relating to holding companies and their subsidiaries, and Sec. 1 (a) recites that such public interest comes from interstate activities of holding companies and their subsidiaries and from lack of effective state regulation of their interstate activities.

closely tied into interstate commerce as these companies will have a material effect on that commerce. In fact, the argument made by the Union Electric Company in the court below (see R. 1236) that the political use of the company's money was favorable to the interests of consumers for the reason that bills disadvantageous to the company were defeated and bills advantageous to its interest were passed, resulting in a saving to the company of approximately two and one-half million dollars annually, is itself an admission that the political activity had a substantial effect on the company's business which, as we have pointed out above, is an interstate business. It is difficult to understand the argument of the lack of a substantial effect on interstate commerce when it is at the same time claimed that the activity has so substantial an effect on the finances of the company. As the court below recognized (R. 1236), whether these effects are deemed salutary or harmful to the public interest was for Congress to decide.

b. Section 12 (h) is likewise constitutional as an exercise of the commerce power in aid of the domestic policies of the states, policies which the Act makes a part of the federal scheme of regulation of interstate commerce. Sections 6 and 7 regulate security issues and Sections 9 and 10 regulate acquisitions of utility assets and utility securities by registered holding companies and their subsidiaries. We believe that we may safely

start with the premise that these sections are a constitutional exercise of federal power.[6]

In these particulars Congress has made the administration of the federal policy dependent on state regulation. Thus Section 6 (b) directs the Commission (by rules, regulations or order, and subject to terms and conditions) to exempt from the standards of Section 7 a security issue of a subsidiary of a registered holding company which has been expressly authorized by the State Commission of the state in which such subsidiary company is organized and doing business. Section 9 (b) contains a similar exemption applicable to acquisitions of public utility assets or of public utility securities where the acquisition has been authorized by the State Commission.

Since the effectiveness of the federal policy under the commerce power is thus made dependent on effective state control, we submit that Section 12 (h) is constitutional as a use of that power in aid of the domestic policies of the states, that is, to preserve their operations from domination or corruption.[7] As the statement of facts above shows, despite the fact that the State of Missouri has forbidden political contributions by corporations for many years,[8] Union Electric for

[6] In 8 years of the administration of the Act, during which the Commission's jurisdiction pursuant to these sections has been exercised in hundreds of situations, their constitutionality has not been challenged.

[7] See 79 Cong. Rec. 10557–10560.

[8] Revised Statutes of Missouri, 1939, Section 11,786.

over a decade subsidized political campaigns of candidates for a wide range of offices in the State of Missouri, legislative, executive, and judicial. If conditions like these were permitted to go unchecked, the reliance which the Act places on effective regulation by the State of Missouri in order to accomplish the ends of Congress would be frustrated. Use of the federal power in aid of the domestic policies of the states under these circumstances, we submit, is clearly constitutional. Cf. *Brooks* v. *United States,* 267 U. S. 432; *Kentucky Whip and Collar Co.* v. *Illinois Central Railroad Co.,* 299 U. S. 334; *In re Rahrer,* 140 U. S. 545; *Clark Distilling Co.* v. *Western Maryland Railway Co.,* 242 U. S. 311; *United States* v. *Hill,* 248 U. S. 420.

In brief, our view on the constitutional issue is that although the specific problem is here raised for the first time, the decision below is correct and is in accordance with precedents established by this Court.

2. Union Electric Company contends (Pet. 12–15) that the trial court erred in instructing the jury as to the test to be applied in determining its corporate responsibility for the acts of its officers. It is, however, well established that a corporation is responsible for the illegal acts of its officers performed for the benefit of the corporation in pursuance of the business of the corporation. *New York Central R. R.* v. *United States,* 212 U. S. 481, 492–496; *Mininsohn* v.

United States, 101 F. (2d) 477, 478 (C. C. A. 3); *Zito* v. *United States,* 64 F. (2d) 772, 775 (C. C. A. 7); *Joplin Mercantile Co.* v. *United States,* 213 Fed. 926, 935–936 (C. C. A. 8), affirmed, 236 U. S. 531. The court instructed the jury to this effect in a charge which paraphrased the language of this Court in the *New York Central R. R.* case, *supra* (R. 1185–1186, 1189).[9] The facts which bring the activities disclosed by the evidence within the scope of this rule are so well summarized in the decision of the circuit court of appeals (R. 1247–1251) that to repeat them here would be supererogatory. In the present case the corporate officers were endeavoring to procure reduction of taxes, favorable public relations and

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[9] The extent and nature of legal liability for the performance of an act forbidden by a federal statute is a federal question, to be determined in accordance with principles established in the federal courts. Cf. *Sola Electric Co.* v. *Jefferson Co.*, 317 U. S. 173, 176; *Prudence Corp.* v. *Geist*, 316 U. S. 89, 95; *Deitrick* v. *Greaney*, 309 U. S. 190, 201, 202. Even if Missouri law were to be applied, however, the same principles of liability would pertain. *Connell* v. *Haase & Sons Fish Co.*, 302 Mo. 48, 87–88 (1923); *Fensky* v. *Casualty* Co., 264 Mo. 154, 160–164 (1915); *State ex inf. Crow* v. *Firemans Fund Ins. Co.*, 152 Mo. 1, 38–39 (1899). Cf. *State ex inf. Hadley* v. *Delmar Jockey Club*, 200 Mo. 34 (1906); *State ex inf. McKittrick* v. *American Insurance Co.*, 346 Mo. 269 (1940). Indeed, on the very facts of the present case a Missouri court held Union Electric liable for the payment of a fine in *quo warranto* proceedings. *State of Missouri* v. *Union Electric Company of Missouri*, Circuit Court of St. Charles County, Mo., No. 18065, May 26, 1941.

friendly legislation, all legitimate corporate ends. This activity was admittedly entrusted to the direction of Boehm and Laun (R. 763, 1112). To effect that aim a large secret fund was put at Boehm's disposal. The corporation cannot, on the plea of ignorance and lack of authorization, escape liability for illegal acts performed by managing officers so employed and so authorized.

3. Egan's contention that his conviction on the conspiracy count was based on an erroneous test of liability (Pet. 14, 27–29) is without merit. The instructions given to the jury embody the very theory which he propounds as the correct rule of law. The trial judge specifically charged the jury that Egan was guilty only if, with knowledge of the unlawful agreement, he "actually participated" therein; that mere knowledge of the illegal acts and failure to prevent or expose them was insufficient to warrant conviction (R. 1188). The circuit court of appeals in its opinion (R. 1246–1247) accepted this rule of law and concluded on the basis of the evidence that the jury was justified in finding Egan's actual participation. The evidence (see Statement, *supra*) amply justifies the conclusion of the jury and of the circuit court of appeals that Egan's conduct amounted to more than mere knowledge and acquiescence, that there was informed and interested cooperation and stimulation. See *Direct Sales Co.* v. *United States,* No. 593, October

Term 1942, decided June 14, 1943. It is thus evident that this aspect of the case involves merely a reconsideration of the sufficiency of the evidence to support Egan's conviction and does not present a proper question for consideration by this Court. *United States* v. *Johnston,* Nos. 4 & 5, October Term, 1942, decided June 7, 1943; *Delaney* v. *United States,* 263 U. S. 586, 589–590.

4. Egan's petition presents the further question whether the words "in connection with" as used in Section 12 (h) were properly interpreted by the trial judge in his charge to include contributions made in contemplation of the candidacy of the recipient (Pet. 11–13, 24–27). The charge was, we submit, clearly proper. Since many activities "in connection with" nomination, election or appointment to office are carried on before the candidacy is officially announced, no arbitrary rule can fix the time when a person becomes a candidate for an office. In this case the jury was not told that contributions to officeholders were necessarily made in connection with their candidacies; it was instructed that if it found as a fact that the money was given in contemplation of the candidacy, the contribution would fall within the prohibition of the statute, otherwise not (R. 1187). The charge therefore properly presented to the jury an issue of fact for their determination.

In any event, the charge did not constitute reversible error. The contributions by way of insurance brokerage fees, about which Egan complains, were a very minor part of the conspiracy disclosed by the evidence. The conspiracy proved obviously contemplated contributions to candidates actually running for office. There was no evidence connecting Egan directly with the payments to office holders.[10] On the other hand, there was evidence of his direct connection with contributions to particular candidates and of his own contributions to national committees (see Statement, *supra*). If Egan was a party to the conspiracy, and the jury has found that he was, he was a party to an agreement to make contributions to candidates and to political parties. Hence, even if the charge were erroneous, it would not present grounds for reversal. Cf. *Douchan* v. *United States,* 136 F. (2d) 144, 147–148 (C. C. A. 6), certiorari denied, No. 1033, October Term, 1942; *Clarke* v. *United States,* 132 F. (2d) 538, 541 (C. C. A. 9), certiorari denied, 318 U. S. 789; *Martin* v. *United States,* 100 F. (2d) 490, 497 (C. C. A. 10), certiorari denied, 306 U. S. 649; *Britton* v. *United States,* 60 F. (2d) 772, 773–774 (C. C. A. 7), certiorari denied, 287 U. S. 669; *Burn-*

[10] Egan's assertion that this aspect of the charge was important in his conviction because the contributions were made from the rebates to which Spoehrer testified is frivolous. The effect of Spoehrer's affidavit was merely to show that Egan had knowledge of the general practice, not of the specific details of his activities (see R. 826).

stein v. *United States,* 55 F. (2d) 599, 607 (C. C. A. 9), certiorari denied, 286 U. S. 550.[11]

CONCLUSION

The decision below is correct. It presents no conflict of decisions and, aside from the constitutional question raised, no question of general importance. If this Court deems the constitutional question of sufficient importance to warrant the granting of writs of certiorari, we respectfully submit that review should be limited to that question.

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NOVEMBER 1943.

[11] The remaining issues raised by Egan's petition (Pet. 7, 15) are not argued in his brief since he concedes that they are not of sufficient importance to warrant a writ of certiorari. The alleged errors assigned were disposed of in the opinion of the circuit court of appeals (R. 1251–1255).

U. S. GOVERNMENT PRINTING OFFICE: 1943